NO. 80204-1

SUPREME COURT
STATE OF WASHINGTON

ARTHUR T. LANE, et al., individually and on behalf of the class of all persons similarly situated, Respondents,

vs.

THE CITY OF SEATTLE, Respondent,

vs.

KING COUNTY FIRE DISTRICT NO. 2; KING COUNTY FIRE DISTRICT NO. 4 (a.k.a Shoreline Fire Department); NORTH HIGHLINE FIRE DISTRICT NO. 11; KING COUNTY FIRE DISTRICT NO. 16 (a.k.a. Northshore Fire Department); KING COUNTY FIRE DISTRICT NO. 20; THE CITY OF SHORELINE; and KING COUNTY, Respondents,

THE CITY OF BURIEN; THE CITY OF LAKE FOREST PARK, Appellants.

BRIEF OF RESPONDENTS FIRE DISTRICTS

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I. INTRODUCTION

This case finds several cities and a county trying to escape their responsibilities as general-purpose governments and, when all else fails, attempting to shift liability to special-purpose governments – the Third Party Defendants Fire Districts. Seattle Public Utilities ("SPU") and Third-Party Defendants City of Burien, City of Lake Forest Park, City of Shoreline and King County (hereinafter collectively "Suburban Cities/County") together install, control and maintain fire hydrants. SPU is empowered to fund all facilities associated with purveying water, and the Suburban Cities/County, as general-purpose governments, possess the power to control the rights of way, the water systems, regulate building construction and tax for the common good.

Now, in their struggle to avoid the cost of operating and maintaining hydrants, SPU and the Suburban Cities/County have entangled Third-Party Defendants/Respondents King County Fire District Nos. 2, 4, 11, 16 and 20 (hereinafter collectively "Fire Districts") -- *special*-purpose governments – in an effort to make the Fire Districts bear the costs of running general-purpose governments. Like roads, traffic signals and streetlights, hydrants are public facilities and may be used by all public entities and the general public alike. Fire districts have no authority to regulate, control or require hydrants. This power resides in

SPU and the Suburban Cities/County. The Fire Districts should be left out of this melee. This is not their fight.

II. ISSUES

A. Can the Suburban Cities/County seek relief against the Fire Districts where no complaint states a cause of action against the Fire Districts?

B. As general-purpose governments, are the Suburban Cities/County liable for the cost of general government functions such as hydrant maintenance?

C. Can hydrant costs be exacted from the Fire Districts where such exaction would constitute an unlawful tax?

D. Does RCW 52.12 et seq. require the Fire Districts to pay for hydrant costs?

E. Does RCW 43.09.210 impose liability for hydrant costs on the Fire Districts?

III. STATEMENT OF THE CASE

A. Factual Background

For decades, the Fire Districts have carried out their limited statutory duties without paying to use public infrastructure, like roads,

streetlights or hydrants.[1] Hydrants, like roads, traffic signals and streetlights, are provided and maintained by other public entities and used like any other public resource. Hydrants are part of water systems operated by various water utilities. In this case, SPU installs, repairs, and replaces the hydrants in public rights of way. CP 2633 at ¶ 7, 2653 (lines 2-9). The general-purpose governments enact and enforce the fire codes. CP 2633 at ¶ 8, 2654, 2655 (lines 2-18), 2656 (lines 1-7), 2657 (lines 10-24), 2658. The fire codes (the International Fire Code as adopted) and building codes adopted and enforced by the Suburban Cities/County determine hydrant placement. CP 2633 – 2634 at ¶ 9, 2659 (lines 1-6), 2660 – 2661 (lines 14-24; 1-7, respectively), 2662 (lines 4-9). The Fire Districts do not control the placement of hydrants, nor do they control hydrant maintenance or operations.

SPU originally allocated hydrant costs to homeowners and businesses through its water rates. CP 679 – 680 at ¶ 8. In 2005, after this Court decided *Okeson v. City of Seattle*, 150 Wn.2d 540, 78 P.3d 1279 (2003), the City of Seattle ("Seattle") shifted the hydrant costs to its general fund and raised its utility tax to cover the costs previously

[1] Although the Fire Districts do not routinely make direct contributions to public infrastructure, the Court should take note of the fact that the Fire Districts are subject to state and local sales tax which indirectly pays for public infrastructure. The Fire Districts also make direct contributions to infrastructure by way of impact fees, right of way dedications, and dedication of "developer" build utilities when building capital projects, such as new stations and training facilities.

included in its rate structure. CP 687 at ¶ 13. Seattle also sought reimbursement from other local governments, including the Fire Districts, for the cost of providing a general governmental service to areas outside of the Seattle City limits. CP 687 – 688 at ¶¶ 11-16. Neither the Suburban Cities/County nor the Fire Districts agreed to pay the charges.

B. Procedural Background

The trial court, citing *Stiefel v. City of Kent*, 132 Wn. App. 523, 132 P.3d 1111 (2006), specifically found that "providing water for fire protection is a governmental function" and that "fire hydrant assessment is a tax and not a regulatory fee". CP 1885 – 1889. This decision placed the responsibility for hydrant costs on the Suburban Cities/County as general-purpose governments. The Suburban Cities/County then argued that "if any governmental entity is liable to Seattle, it is the fire protection districts." In its July 31, 2006 oral ruling and by subsequent order, the trial court, under CR 19 and in an effort to have this matter finally resolved, directed Seattle to serve the Fire Districts, within 15 days of its oral ruling, with pleadings adding them as parties in this action. CP 1892 (lines 22-25), 871 (lines 3-12).

Seattle thereafter filed its Third-Party Cross-Complaint against the Fire Districts on August 17, 2006, two days after the trial court's 15-day written joinder deadline. CP 2075 – 2082. Seattle conceded its Cross-

Complaint failed to state a cause of action against the Fire Districts. CP 3299 – 3300 (lines 18-23; 1-7, respectively). Curiously, although the Suburban Cities/County argued that liability for hydrant costs should be imposed on the Fire Districts, none of them ever filed a claim against the Fire Districts. The Fire Districts moved to dismiss under CR 12(b)(6), or, in the alternative, for summary judgment of dismissal, in part because, under *Okeson,* the general-purpose, not the special-purpose, governments should be liable for hydrant costs.

At summary judgment, the trial court did not reach the Fire Districts' CR 12(b)(6) argument, but ruled that the Suburban Cities/County, as the analogous entities under *Okeson*, should bear the hydrant costs. CP 3963 (starting at line 7) – 3967 (ending at line 18).[2] The trial court dismissed the Fire Districts from the action with prejudice. The Cities of Burien and Lake Forest Park appealed.

IV. SUMMARY OF ARGUMENT

The Fire Districts' role in this litigation is limited. The Fire Districts do not take issue with Burien and Lake Forest Park's position that SPU, acting in a proprietary capacity, may include hydrant costs in its rate structure. However, should this Court decide that SPU may not do so,

[2] Determining that the general governmental authorities were liable for hydrant costs under *Okeson*, the court found in favor of King County and the City of Shoreline pursuant to the terms of their franchise agreements.

it is the Fire Districts' position that the Suburban Cities/County should pay for hydrant costs.

First, no complaint states a cause of action against the Fire Districts, and the Suburban Cities/County have not filed a claim against them. No relief against the Fire Districts was sought. Second, *Okeson* assigned liability for general government costs to the general-purpose government, not a special-purpose district. Thus, it is the Suburban Cities/County that should pay for hydrant costs rather than the special-purpose Fire Districts. Third, any attempt to pass off the costs to the Fire Districts would be an illegal tax. Finally, neither RCW 52.12 et seq. nor RCW 43.09.210 creates any fire district obligation to pay hydrant costs. The trial court's dismissal of the Fire Districts from this action should be upheld.

V. ARGUMENT

A. Standard of Review on Appeal

The Fire Districts agree with the standard of review as stated by Burien and Lake Forest Park.

B. No Complaint States a Cause of Action Against the Fire Districts

Without a valid complaint against the Fire Districts, neither Seattle nor the Suburban Cities/County can seek a remedy against them. A plaintiff, via complaint, must make "a short and plain statement of the

claim showing that he is entitled to relief." CR 8(a).[3] "Claim" is co-extensive with 'case,' and embraces all *causes of action*..." *Northwestern and Pacific Hypotheek Bank v. State of Washington*, 18 Wash. 73, 76, 50 P.586 (1897) (emphasis added). Although inexpert pleading is permitted, insufficient pleading is not. *Lewis v. Bell*, 45 Wn. App. 192, 197, 724 P.2d 425 (1986). At a minimum, a complaint must identify the legal theories upon which the plaintiff is seeking recovery. *Molloy v. City of Bellevue*, 71 Wn. App. 382, 385, 859 P.2d 613 (1993).

Seattle, the Suburban Cities/County and the Fire Districts all agreed below that Seattle failed to state a claim against the Fire Districts upon which relief can be granted. CP 3329 – 3300 (lines 18-23; 1-7, respectively), 3309 (lines 2-5), 3317 – 3317 (lines 12-24; 1-13, respectively). The Suburban Cities/County have never filed a complaint against the Fire Districts. The issue of Fire District liability is thus not properly before this Court. See, e.g. *Pacific Northwest Shooting Park Ass'n v. City of Sequim*, 158 Wn.2d 342, 144 P.3d 276 (2006). Under

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[3] This statement must contain "either direct allegations on every *material* point necessary to sustain a recovery on any legal theory, even though it may not be the theory suggested or intended by the pleader, or contain allegations from which an inference fairly may be drawn that evidence on these *material* points will be introduced at trial." 5 CHARLES ALAN WRIGHT & ARTHUR MILLER, FEDERAL PRACTICE AND PROCEDURE, § 1216, 156-59 (2d ed. 1990) (quoted in 3A LEWIS H. ORLAND & KARL B. TEGLAND, WASHINGTON PRACTICE: RULES PRACTICE, 123 (1992)) (emphasis added). A cause of action and related elements must be articulated, therefore, to provide a framework for determining factual materiality; and the pleader must suggest *some* legal theory, at least.

analogous federal authority, to bring in a third-party defendant, a third-party plaintiff must state facts sufficient to constitute a cause of action. *Mitchell v Duquesne Brewing Co.*, 34 FRD 145, 147 (DC Pa.1963) (Fed. R. Civ. P. 14); conf. *Okeene ex rel. Burgard v Kratz,* 45 F. Supp. 629, 636 (DC Okla. 1942) (if no ancillary proceeding is set out, there is nothing to adjudicate between a defendant and a third-party defendant).

Seattle agrees that the Fire Districts bear no responsibility for hydrant costs, and agrees that its Cross-Complaint fails to state cause of action or legal theory that would impose any liability on the Fire Districts.[4] CP 3299 – 3300 (lines 18-23; 1-7, respectively).

Although the Suburban Cities/County admitted below that Seattle failed to state a claim against the Fire Districts, they nevertheless assert that if they (Suburban Cities/County) are held liable for hydrant costs, it is the Fire Districts that must pay. The Suburban Cities/County, however, are in a quandary. If they do not own or operate the water system, and the water purveyor has no cause of action against the Fire Districts, what is the basis for payment? In fact, there is none. It has been admitted.

[4] Again, see Seattle's Response, pg. 4, lines 5-7; also, "One of the respective sets of third party defendants does not belong in this action", Seattle's Response to Cities/County's Motion for Special Setting/Continuance, pg. 2, line 17.

C. The Suburban Cities/County Are Liable for Hydrant Costs

1. The Fire Districts are not liable for proprietary hydrant costs

Hydrant costs implicate all parties but the Fire Districts. The general operation of a municipal water system is a proprietary function. *Stiefel,* 132 Wn. App. at 529 (citing *Russell v. City of Grandview*, 39 Wn.2d 551, 553, 236 P.2d 1061 (1951)). Hydrants regularly serve many purposes unrelated to fire suppression to benefit other users and their contractors – including slurry sealing, vactoring, and street sweeping. CP 2633 at ¶ 5, 2650 (lines 7-21). Other purposes include flushing for water quality, the hydro-seeding of landscaping projects, flow tests, and construction site use. CP 2633 at ¶ 6, 2651 – 2652 (lines 10-23; 1-4, respectively). These functions are all proprietary. The Fire Districts do not use hydrants for these or any proprietary purposes, nor do they benefit from these uses. The costs associated with these uses cannot be assigned or even connected to the Fire Districts. If the Court applies a proprietary analysis, the Fire Districts cannot be held liable for such costs.

2. Under *Okeson*, general-purpose governments bear the cost of general government functions

Though the other parties use hydrants for their own proprietary purposes, supplying water for fire suppression is a governmental function.

See *Stiefel,* 132 Wn. App. at 530. *Stiefel*, in the hydrant context, recognized *Okeson's* acknowledgment of the flexible nature of utilities:

> More recently, our Supreme Court has recognized that in providing certain utilities, a municipality may act in *both* a governmental and proprietary capacity. *See Okeson v. City of Seattle*, 150 Wn.2d 540, 550-51, 78 P.3d 1279 (2003) (municipal electric utility is a proprietary function; provision and maintenance of streetlights is a governmental function).

(emphasis added). *Id.* If the Court applies the governmental function analysis, the Suburban Cities/County are liable for hydrant costs. *Okeson,* by holding that the transfer of streetlight costs from Seattle's general fund to City Light customers was an unconstitutional tax, assigned responsibility for those costs to Seattle – a *general-purpose* government – not the special-purpose utility. Here, it is the general-purpose governments – the Suburban Cities/County – that should pay for hydrant costs, not the Fire Districts. The Fire Districts are *special*-purpose municipal corporations, created under RCW 52.12 et seq. for a specific purpose. They have no general government authority whatsoever.

SPU and the Suburban Cities/County, not the Fire Districts, exert considerable control over the hydrants. SPU installs, repairs, and replaces the hydrants in public rights of way. CP 2633 at ¶ 7, 2653 (lines 2-9). The general-purpose governments enact and enforce the fire codes. CP 2633 at ¶ 8, 2654, 2655 (lines 2-18), 2656 (lines 1-7), 2657 (lines 10-24), 2658. The fire codes (the International Fire Code as adopted) and building

codes adopted and enforced by the general-purpose governments determine hydrant placement. CP 2633 – 2634 at ¶ 9, 2659 (lines 1-6), 2660 – 2661 (lines 14-24; 1-7, respectively), 2662 (lines 4-9). Hydrants to the water system are analogous to streetlights to an electrical system.

The Fire Districts only use the hydrants on behalf of the citizenry and for their statutorily limited purpose. The Fire Districts' use of hydrants for suppression activities is no different than their use of traffic signals, roads or streetlights in response to emergencies. At best, the Fire Districts use the hydrants with the consent of the Suburban Cities/County, under the regulations imposed. The Fire Districts also make use of many privately owned hydrants for fire suppression, yet none would argue that the Fire Districts should pay to maintain these.

Like the "amount of streetlight" referred to in *Okeson*, none of the general-purpose governments involved here can point to a quantifiable amount of hydrant use attributable to the Fire Districts. CP 2663 – 2664 (lines 11-25; 1-14, respectively), 2665 (lines 1-12), 2666 (lines 2-14), 2667 (lines 1-9), 2668 – 2669 (lines 19-25; 1-9, respectively). Thus, alleging any liability of the Fire Districts contradicts controlling statutory and analogous authority. The Suburban Cities/County, as the trial court found, are the analogous governments under *Okeson* to pick up the costs.

D. The Suburban Cities/County Lack Authority to Recover Hydrant Costs From the Fire Districts

The Suburban Cities/County raise *Covell v. City of Seattle,* 127 Wn.2d 874, 905 P.2d 324 (1995), to shield themselves from liability for hydrant costs, yet fail to see that the same analysis actually protects the Fire Districts. A valid regulatory fee is distinguished from an unconstitutional tax by asking whether the primary purpose of the legislation is to regulate fee payers or to collect revenue to finance broad-based and costly public improvements; whether the money collected from the fees is segregated and allocated exclusively to regulating the assessed entity or activity; and whether a direct relationship exists between the rate charged and a service received by the fee payers or a burden to which they contribute. In this case, the hydrant charges would be imposed for one thing and one thing only – to raise revenues. It, therefore, would not be a valid regulatory fee.

E. The Fire Districts Are Not Liable for Hydrant Costs Under RCW 52.12 et seq.

RCW 52.12 imposes no obligation on the Fire Districts to pay for hydrants. RCW 52.12.021 provides, in part:

> Fire protection districts have full authority to carry out their purposes and to that end *may* acquire, purchase, hold, lease, manage, occupy, and sell real and personal property... and to do any and all lawful acts required and expedient to carry out the purpose of this title.

RCW 52.12.031(1) is equally permissive:

> Any fire protection district organized under this title *may:*
>
> (1) Lease, acquire, own, maintain, operate, and provide fire and emergency medical apparatus and all other necessary or proper facilities, machinery, and equipment for the prevention and suppression of fires, the providing of emergency medical services and the protection of life and property...

(emphasis added). The imperative "shall" makes no appearance; instead, the statute uses "may." The Fire Districts, therefore, enjoy absolute discretion in the means used to carry out their purposes.

Several Colorado decisions arrive at similar results. *See, e.g., Durnford v. Thornton*, 29 Colo. App. 349, 355, 483 P.2d 977, 979 (1971) (permissive statute authorized but did not require fire district to provide for hydrants)[5]; *Alameda Water & Sanitation Dist. v. Bancroft Fire Protection Dist.*, 35 Colo. App. 192, 193-195, 532 P.2d 60, 62 (1974) (fire district not required to pay for hydrant water or maintenance where statute imposed no such obligation and hydrants already maintained by water district)[6]; upheld by *Alameda Water & Sanitation Dist. v. Bancroft Fire Protection Dist.*, 190 Colo. 195, 197, 544 P.2d 979, 981 (1976) (water district obligated by statute to repair hydrants). RCW 52.12.021 does not at all support burdening the Fire Districts with hydrant bills. The statute

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[5] C.R.S. 1963, 89-6-14 (attached hereto as Appendix A)

[6] "A fire protection district is one to supply protection against fire by any available means." C.R.S.1963, 89-5-2(1)

mentions nothing about fire hydrants, nothing about mandatory payment to other government units concerning hydrants, and is directed only to autonomous fire district activities. The legislature unambiguously delegated power to the fire districts to allow them full discretion in carrying out their daily activities. Likewise, the legislative scheme places all responsibility for fire hydrants with the water purveyors, as they are an integral part of the water systems. The intersection of hydrant costs and fire district responsibility so doggedly sought by the Suburban Cities/County simply does not exist.

Further, power to levy property taxes does not justify saddling the Fire Districts with liability here. The ability to cover general municipal costs, such as those for hydrants, can be and is more appropriately covered by the Suburban Cities/County, the general municipal governments of those areas. The legislature allows cities annexed into fire or library districts to impose an additional $0.225 per $1,000 of assessed valuation. See RCW 52.04.081; RCW 84.52.043(1)(d)[7]. The additional taxing authority of the Suburban Cities/County is there.

Further, looking only at property taxes in this situation is to ignore the reality that property taxes, while almost exclusively relied upon by the Fire Districts, only constitute a fraction of the overall taxing authority of

[7] Attached hereto as Appendix B.

the Suburban Cities/County, which also receive sales taxes, fees, fines and penalties to cover their budgets[8].

Burien also places undue emphasis on Seattle's initial attempts to shed responsibility for hydrant costs. Seattle's administrative offices made the ill-advised decision to invoice the Fire Districts before being fully informed of the limited authority of the Fire Districts. Seattle subsequently invoiced the Suburban Cities/County, the general governments serving these areas. Yet, Burien, of course, believes this decision was unsustainable. In essence, none of the proposed billings have any bearing on this case.

F. RCW 43.09.210 Does Not Impose Liability for Hydrant Costs on The Fire Districts

RCW 43.09.210, the Local Government Accounting Act, provides:

> All service rendered by, or property transferred from, one department, public improvement, undertaking, institution, or public service industry to another, shall be paid for at its true and full value by the department, public improvement, undertaking, institution, or public service industry receiving the same, and no department, public improvement, undertaking, institution, or public service industry shall benefit in any financial manner whatever by an appropriation or fund made for the support of another.

In this case, no formal "transfer" or conveyance of title to water from hydrants for fire-fighting purposes occurred by means of sale, gift or other

[8] While the intent is not to perform a complete analysis of each entity's taxing authority, the Court must recognize that the disparity between the Fire Districts and the general municipal governments of the Suburban Cities/County is, at the very least, significant.

process. No title documents were negotiated, agreed upon, supported by consideration, notarized or filed. Neither did the Fire Districts benefit financially from having a water supply – the supply of water merely assists the Fire Districts in suppressing certain fires. The beneficiaries are the individual businesses and homeowners, who obtain more favorable insurance rates, the insurance companies that issue those policies, and ultimately the citizens whose houses and businesses are saved in the unfortunate event of fire.

Further, RCW 43.09.210 does not create a private cause of action that can be the basis of a claim against the Fire Districts. See *Eugster v. City of Spokane*, 139 Wn. App. 21, 28-29, 156 P.3d 912 (2007). The state auditor alone has power to investigate improper government accounting actions and inform the attorney general. RCW 43.09.050(3) & (4). The attorney general then institutes any legal action. RCW 43.09.260. A taxpayer may not maintain an action against city officials to recover public moneys unlawfully paid out, unless the attorney general refuses to act. *Jones v. City of Centralia*, 157 Wash. 194, 289 P. 3 (1930). No statute authorizes the state auditor to bring suits on behalf of the state. *State ex rel. Graham v. San Juan County*, 102 Wn.2d 311, 686 P.2d 1073 (1984). Even the United States District Court may not control exercise of the state auditor's discretion. *United States ex rel. Miller v. Clausen*, 291 F. 231 (D.

Wash. 1923), appeal dismissed, 266 U.S. 641, 45 S. Ct. 126, 69 L. Ed. 484 (1924). Enforcement is reserved to the auditor and not granted to the Suburban Cities/County.

Finally, RCW 43.09.210 does not even imply a cause of action. Washington has adopted a three-part test to determine whether a statute impliedly creates a right to sue:

> First, whether the plaintiff is within the class for whose 'especial' benefit the statute was enacted; second, whether legislative intent, explicitly or implicitly, supports creating or denying a remedy; and third, whether implying a remedy is consistent with the underlying purpose of the legislation.

Bennett v. Hardy, 113 Wn.2d 912, 920-21, 784 P.2d 1258 (1990).

In *Braam v. State*, 150 Wn.2d 689, 81 P.3d 851 (2003), the court found that though a number of statutes specially benefited foster children, there was no evidence of legislative intent to create a private cause of action, and implying one was inconsistent with the broad power vested in the Department of Social and Health Services to administer the statutes. The auditor is vested with a decisively similar power here and there is no special benefit for the Suburban Cities/County in the statute. Implying a cause of action for the Suburban Cities/County would thwart legislative intent. This lawsuit cannot provide a remedy under the Local Government Accounting Act.

VI. CONCLUSION

The need for hydrants is driven by the building and fire codes adopted by general-purpose governments who have the general responsibility of providing for the health, safety and welfare of the public. *Washington State Constitution, Article XI, Section 11.* While the Fire Districts use hydrants, as others do, such use is not required. Although the Fire Districts in the present proceeding are all urban-level providers, many fire districts in rural areas rely on water tenders as no hydrant service is available. Even if such a fire district determined that it wanted to install its own hydrants, the fire district does not have the statutory authority to install water works as the state legislature has delegated this authority exclusively to cities, towns, PUDs and water districts. The Suburban Cities/County have provided no evidence of any fire district that has installed, maintained or operated a waterworks system designed solely for providing hydrants within the district.

Fire hydrants are analogous to streetlights. Streetlights are a part of an electrical system that provides benefits to the general public, giving out light to pedestrians, motorists, police officers, fire fighters, utility workers and postal workers – essentially everyone passing by. Hydrants ("fire hydrants") are no different.

While commonly known as fire hydrants, these hydrants are an integral part of a water system that benefits the general public. Hydrants are used for flushing water lines, street cleaning, construction activities, and a host of other public and private uses by a wide range of users.

Hydrant use related to fire suppression is, in fact, small. The benefit which hydrants provide to the general public, however, is great. Hydrants are a public resource that provides a great benefit to everyone regardless of their use. Whether this benefit is reflected in lower insurance rates for homes and businesses, clean streets or pure water, it does not change the nature of the general good conferred.

In fact, hydrants are no different than streetlights, traffic signals and roads. Hydrants benefit the public in many general and specific ways, just as do streetlights, which light our streets for safety; traffic signals, which control the flow of our automobiles for convenience and safety; and roads, which provide convenience, safety and promote commerce.

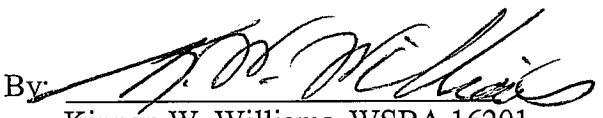
Thus, if the overall costs of hydrants are determined by this Court not to be so integral to the overall operation of the water system, whereby these costs cannot be included within the water rates, this Court is led to only one conclusion.

General-purpose governments – not *special*-purpose governments – are responsible for the cost of general government functions, including the costs of maintaining and operating hydrants.

DATED this 16th day of October, 2007.

Respectfully submitted,

WILLIAMS & WILLIAMS, PSC

By: 

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APPENDIX

A. C.R.S. 1963, 89-6-14

B. RCW 52.04.081; and RCW 84.52.043(1)(d)

and each sixth year thereafter, there shall be elected two members of the board to serve for terms of six years. At the third biennial election, and each sixth year thereafter, there shall be elected two members of the board to serve for terms of six years. Not later than thirty days before any such election nominations may be filed with the secretary of the board and if a nominee does not withdraw his name before the first publication of the notice of election, his name shall be placed on the ballot. The board shall provide for holding such election and shall appoint judges to conduct it.

(3) The secretary of the district shall give notice of election by publication, and shall arrange such other details in connection therewith as the board may direct. The returns of the election shall be certified to and shall be canvassed and declared by the board. The candidates, according to the number of directors to be elected, receiving the most votes shall be elected. Any new member of the board shall qualify in the same manner as members of the first board qualify. In existing districts, directors whose term of office would expire in January shall continue to hold office until their successors qualify. In existing districts having only three directors, as soon as practical hereafter the board shall appoint two additional directors for the filling of vacancies on the board. Such appointed directors, as well as directors now holding office, shall continue to hold office until their successors shall be elected and qualified. Newly elected directors shall assume office on September first following said elections.

Source: L. 49, p. 420, § 2; CSA, C. 68A, § 12; CRS 53, § 89-6-13.

89-6-14. General powers.—For the purpose of providing fire protection to the property within the district, the district, and on its behalf the board, shall have the following powers:

(1) To have perpetual existence.

(2) To have and use a corporate seal.

(3) To sue and be sued, and be a party to suits, actions and proceedings.

(4) To enter into contracts and agreements with any person or corporation, public or private, affecting the affairs of the district, including contracts with municipalities, the state of Colorado or the United States of America and any of its agencies or instrumentalities. A notice shall be published for bids on all construction or purchase contracts for work, or material, or both, involving an expense of five thousand dollars or more. The district may reject any and all bids, and if it shall appear that the district can perform the work or secure material for less than the lowest bid, it may proceed so to do.

(5) Upon approval of the taxpaying electors, to borrow money and incur indebtedness and evidence the same by certificates, notes or debentures and to issue bonds, in accordance with the provisions of this article.

(6) To acquire, dispose of, and encumber real and personal property, fire stations, fire protection and fire fighting equipment, and any interest therein, including leases and easements; and to undertake and to operate as a part of the duties of the district an ambulance service, a rescue unit, and a diving and grappling service.

(7) To refund any bonded indebtedness of the district without an election. Other than maturity and rate of interest, the terms and conditions of refunding bonds shall be substantially the same as those of an original issue of bonds.

(8) To have the management, control and supervision of all the business and affairs of the district, and the construction, installation, operation and maintenance of district improvements therein.

(9) To hire and retain agents, employees, engineers and attorneys.

"A"

(10) To have and exercise the power of eminent domain and dominant eminent domain and in the manner provided by law for the condemnation of private property for public use to take any property within the district necessary to the exercise of the powers granted in this article.

(11) To adopt and amend by-laws, not in conflict with the constitution and laws of the state for carrying on the business, objects and affairs of the board and of the district.

(12) To have and exercise all rights and powers necessary or incidental to or implied from the specific powers granted in this article. Such specific powers shall not be considered as a limitation upon any power necessary or appropriate to carry out the purposes and intent of this article.

(13) To create and maintain a firemen's pension fund, under the provisions of article 50 of chapter 139, C.R.S. 1963.

Source: L. 49, p. 421, § 2; CSA, C. 68A, § 13; CRS 53, § 89-6-14; L. 61, pp. 525, 836, §§ 1, 16.

89-6-15. Power to tax.—For the purpose of providing revenue for such districts, the board shall have power and authority to levy and collect ad valorem taxes on and against all taxable property within the district, including the right to levy the tax authorized by section 139-50-5(2), C.R.S. 1963; but in no event shall such total levy exceed six mills in any one year.

Source: L. 49, p. 422, § 2; CSA, C. 68A, § 14; CRS 53, § 89-6-15; L. 55, p. 557, § 3; L. 61, p. 836, § 17.

89-6-16. Levy and collection of taxes.—To levy and collect taxes, the board shall determine in each year the amount of money necessary to be raised by taxation and shall fix a rate of levy, not to exceed six mills, which when levied upon every dollar of assessed valuation of taxable property within the district, will raise the amount required by the district annually to supply funds for paying expenses of organization and the costs of acquiring, operating, and maintaining the works and equipment of the district, and promptly to pay in full, when due, all interest on and principal of bonds and other obligations of the district. The board, on or before the first day of October of each year, shall certify to the board of county commissioners of each county within the district, or having a portion of its territory within the district, the rate so fixed with directions that at the time and in the manner required by law for levying taxes for county purposes, such board of county commissioners shall levy such tax upon the assessed valuation of all taxable property within the district, in addition to such other taxes as may be levied by such board of county commissioners, at the rate so fixed and determined.

Source: L. 49, p. 422, § 2; CSA, C. 68A, § 15; CRS 53, § 89-6-16; L. 55, p. 557, § 4.

89-6-17. Levies to cover maturing obligations.—The board, in certifying annual levies, shall take into account the maturing indebtedness for the ensuing year as provided in its contracts, maturing bonds and interest on bonds, and shall make ample provisions for the payment thereof.

Source: L. 49, p. 422, § 2; CSA, C. 68A, § 16; CRS 53, § 89-6-17; L. 55, p. 557, § 5.

Cross reference: For procedure to increase tax levy beyond statutory limits, compare 88-3-1 and 88-3-2.

89-6-18. County officers to collect taxes—lien.—It shall be the duty of the body having authority to levy taxes within each county to levy the

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RCW 52.04.081

Annexation of adjacent city or town — Annual tax levies — Limitations.

The annual tax levies authorized by chapter 52.16 RCW shall be imposed throughout the fire protection district, including any city or town annexed thereto. Any city or town annexed to a fire protection district is entitled to levy up to three dollars and sixty cents per thousand dollars of assessed valuation less any regular levy made by the fire protection district or by a library district under RCW 27.12.390 in the incorporated area: PROVIDED, That the limitations upon regular property taxes imposed by chapter 84.55 RCW apply.

[1984 c 230 § 17; 1979 ex.s. c 179 § 4. Formerly RCW 52.04.190.]

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RCW 84.52.043
Limitations upon regular property tax levies.

Within and subject to the limitations imposed by RCW 84.52.050 as amended, the regular ad valorem tax levies upon real and personal property by the taxing districts hereafter named shall be as follows:

(1) Levies of the senior taxing districts shall be as follows: (a) The levy by the state shall not exceed three dollars and sixty cents per thousand dollars of assessed value adjusted to the state equalized value in accordance with the indicated ratio fixed by the state department of revenue to be used exclusively for the support of the common schools; (b) the levy by any county shall not exceed one dollar and eighty cents per thousand dollars of assessed value; (c) the levy by any road district shall not exceed two dollars and twenty-five cents per thousand dollars of assessed value; and (d) the levy by any city or town shall not exceed three dollars and thirty-seven and one-half cents per thousand dollars of assessed value. However any county is hereby authorized to increase its levy from one dollar and eighty cents to a rate not to exceed two dollars and forty-seven and one-half cents per thousand dollars of assessed value for general county purposes if the total levies for both the county and any road district within the county do not exceed four dollars and five cents per thousand dollars of assessed value, and no other taxing district has its levy reduced as a result of the increased county levy.

(2) The aggregate levies of junior taxing districts and senior taxing districts, other than the state, shall not exceed five dollars and ninety cents per thousand dollars of assessed valuation. The term "junior taxing districts" includes all taxing districts other than the state, counties, road districts, cities, towns, port districts, and public utility districts. The limitations provided in this subsection shall not apply to: (a) Levies at the rates provided by existing law by or for any port or public utility district; (b) excess property tax levies authorized in Article VII, section 2 of the state Constitution; (c) levies for acquiring conservation futures as authorized under RCW 84.34.230; (d) levies for emergency medical care or emergency medical services imposed under RCW 84.52.069; (e) levies to finance affordable housing for very low-income housing imposed under RCW 84.52.105; (f) the portions of levies by metropolitan park districts that are protected under RCW 84.52.120; (g) levies imposed by ferry districts under RCW 36.54.130; (h) levies for criminal justice purposes under RCW 84.52.135; and (i) the portions of levies by fire protection districts that are protected under RCW 84.52.125.

[2005 c 122 § 3; 2004 c 80 § 4; 2003 c 83 § 311; 1995 c 99 § 3; 1993 c 337 § 3; 1990 c 234 § 1; 1989 c 378 § 36; 1988 c 274 § 5; 1973 1st ex.s. c 195 § 134.]